

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALLSTATE INSURANCE COMPANY

v.

CA No. 01-442-T

MICHAEL FORTI, MALISSA FORTI,
ROBERT FORTI and EDWARD IMONDI

ORDER DENYING DEFENDANT MICHAEL FORTI'S
MOTION TO DISMISS

Defendant Michael Forti has moved to dismiss the plaintiff's declaratory judgment complaint.

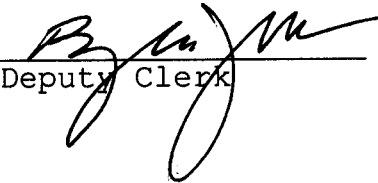
The issue decided by the Rhode Island Superior Court in the case of Forti v. Forti (Case No. PC 1999-5843) was whether defendant Michael Forti was negligent and, thus, liable to Malissa Forti, Robert Forti and Edward Imondi for injuries they allegedly sustained in the collision. In this case, on the other hand, the issues are:

- (1) Whether an incident covered by Allstate's automobile insurance policy, in fact, occurred and, thus, whether there is coverage for the claims asserted by the defendants under the uninsured motorist provisions of the policy .
- (2) Whether Allstate is liable for bad faith refusal to pay those claims as set forth in the defendants' counterclaim.

Moreover, even if the requisite identity of issues existed, Allstate would not be bound by the decision in Forti v. Forti because it was neither a party to that case nor in privity with a party. Although Allstate may have been obliged to provide a defense to Michael Forti, it had an interest that was materially adverse.

Therefore, defendant Michael Forti's motion to dismiss the complaint is hereby DENIED.

By Order


Deputy Clerk

ENTER:


Ernest C. Torres
Chief Judge

Date: Oct. 5 , 2005